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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 530

HAZEL E. BRIGGS,

Petitioner,

v.

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

TABLE OF CASES CITED

STATUTES CITED

MISCELLANEOUS CITATIONS

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Opinions Below

The District Court filed a memorandum decision (R. 19) which is not reported. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 24) is reported 164 F. (2d) 21. The opinion of the Circuit Court of Appeals for the Second Circuit on a prior appeal is reported 153 F. (2d) 841.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on October 30, 1947 (R. 28). The petition for a writ of certiorari was filed on January 16, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347 (a)).

Questions Presented

1. Whether the Court below erred in holding that in an action under the Federal Employers' Liability Act the petitioner is not entitled to interest under the federal interest statute R. S. 966 (28 U. S. C. A., 811) from the date of the verdict to the date of the judgment for the petitioner, the judgment of the District Court dismissing the complaint after a jury verdict for the petitioner having been reversed on a prior appeal.

2. Whether the Court below erred in holding that petitioner is not entitled under Section 480 of the Civil Practice Act of the State of New York to recover interest on the verdict from the date of the verdict to the date of the judgment in an action brought under the Federal Employers' Liability Act.

Statutes Involved

Section 966 of the Revised Statutes, 28 U. S. C. A. Section 811, provides:

> "Interest on judgments. Interest shall be allowed on all judgments in civil causes, recovered in a district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State."

Rule 58 of the Federal Rules of Civil Procedure provides:

> "Entry of Judgment. Unless the court otherwise directs, judgment upon the verdict of a jury shall be

entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry."

Statement

The petitioner instituted this action under the Federal Employers' Liability Act (28 U. S. C. A., Sections 51-59) to recover damages because of the death of her husband while employed by the respondent. During the trial respondent moved to dismiss the complaint because of petitioner's lack of capacity to sue, and the Court reserved decision on the motion (R. 3). A jury verdict in the amount of $42,500 was returned for the petitioner. Later the district court granted respondent's motion to dismiss. The court set aside the verdict, and judgment was entered dismissing the complaint (R. 3-4). On appeal the judgment was reversed—*Briggs* v. *The Pennsylvania Railroad Company*, 153 F. (2d) 841. The mandate of the Circuit Court of Appeals dated January 23, 1946 directed "that the judgment of said district court be and it hereby is reversed with costs, taxed at the sum of $100.62; judgment be entered for the plaintiff [petitioner] on the verdict in accordance with the opinion of this Court" (R. 5-9). The mandate was silent as to interest.

On January 28, 1946, the district court entered judgment on the mandate (R. 10). That judgment allowed interest amounting to $2,429.58 for the period from February 15, 1945, the date of the verdict, up to January 28, 1946, the date on which the judgment for the petitioner was entered of record.

On February 7, 1946, respondent moved to resettle the judgment by striking out that portion of the judgment allowing interest between the date of the verdict and the date on which the judgment for petitioner was entered (R. 12). Respondent's motion was denied by the district court on March 5, 1946 (R. 18). On the same date a memorandum of decision was filed by the district court (R. 19).

On April 22, 1946, an appeal was taken to the United States Circuit Court of Appeals from that part of the judgment of the district court which allowed interest from the date of the verdict to the date of the entry of judgment for petitioner (R. 20). On October 30, 1947, the Circuit Court of Appeals handed down its decision modifying the judgment of the district court to exclude all interest upon the amount of the verdict up to the date judgment for petitioner was entered and the judgment, as so modified, was affirmed (R. 24-28).

The unanimous opinion of the Court below (R. 24-27) holding that petitioner was not entitled to interest except for the period after the date that the judgment for petitioner was entered of record is based on two principal grounds:

1. After pointing out that an action under the Federal Employers' Liability Act is covered by federal law and that damages and interest are to be determined by federal law, the opinion concluded that R. S. 966, the applicable federal interest statute, authorizes the allowance of interest only from the date on which the judgment was actually entered. The opinion rejected the contention that under

Rule 58 of the Rules of Civil Procedure the date of the verdict should be held to be the date of the judgment for the petitioner. In reaching that result the Court pointed out that no judgment for the petitioner was authorized to be entered on the verdict prior to the date of the mandate reversing the judgment of the trial court.

2. The opinion also held that the trial court was without jurisdiction to enter a judgment for the petitioner except in conformity to the mandate. Assuming *arguendo* the mandate to be in error as to the interest which should be allowed, the Court below concluded that it could not on this appeal recall and correct the mandate, in view of the fact that the term in which the mandate was entered had ended and because there were present no exceptional circumstances warranting such action.

Argument

The petition for a writ of certiorari raises a narrow issue. The respondent has paid the full amount of the verdict and respondent does not challenge its obligation under R. S. 966 to pay interest on the amount of the judgment for the period after the judgment for petitioner was entered of record. The judgment for the petitioner, reversing the prior judgment for respondent, was entered on January 28, 1946 (R. 10-11). The sole question, therefore, is whether interest should be allowed for the period prior to that date on the theory that judgment should be regarded as having been constructively dated on the date of the jury's verdict.

A. In a suit under the Federal Employers' Liability Act the substantive rights of the parties, including damages and interest, are governed by federal law.

This suit is based solely on the Federal Employers' Liability Act. The Court below, following well established principles, held that in a suit to enforce liability under that statute the federal law governs the substantive rights of the litigants, including the measure of damage, *Chesapeake & Ohio Ry. Co.* v. *Kelly*, 241 U. S. 485, and the allowance of interest on a judgment, *Murphy* v. *Lehigh Valley Ry. Co.*, 158 F. (2d) 481 (C. C. A. 2); *Louisiana & Arkansas Ry. Co.* v. *Pratt*, 142 F. (2d) 847 (C. C. A. 5). See also *Restatement Conflict of Laws*, Section 412 (a) and (b). It follows, as both the district court and the court below held, that petitioner's rights to interest on the judgment in its favor are governed by federal law. Petitioner's argument that she is entitled to interest on the judgment measured by the New York Statute is, therefore, without merit.[1]

B. Under the applicable federal interest statute petitioner is entitled to interest from the date of the judgment in her favor, but not for any prior period.

The applicable federal statute dealing with interest on judgments, R. S. 966, provides that interest "shall be calculated from the date of the judgment * * *". The court below followed the plain language of the statute and held that interest should not be assessed before the date on which the judgment for petitioner was entered of record, irrespective of the date of the jury verdict.

Petitioner's argument is based on the theory that the words "the date of the judgment" should be construed to

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[1] *Klaxon* v. *Stenter Em. Co.*, 313 U. S. 487 and *Massachusetts Benefit Association* v. *Miles*, 137 U. S. 689, cited by petitioner were cases based on diversity of citizenship and did not involve the enforcement of a right created by federal statute.

mean the date of the verdict in cases in which the judgment of the district court is reversed. To reach this result, petitioner relies on Rule 58 of the Rules of Civil Procedure. Rule 58 provides that unless the Court otherwise directs, a judgment upon the verdict of a jury shall forthwith be entered by the clerk. Petitioner argues that but for the erroneous decision of the district court in dismissing the complaint, the clerk would have entered judgment in its favor on the verdict and that the judgment should be held to have been constructively entered on the date of the verdict. The petitioner overlooks the fact that Rule 58 does not contemplate the automatic and inexorable entry of judgments by the clerk on the date of the verdict. As the court below held, until the trial court has disposed of all pending matters the clerk has no power to enter judgment upon a verdict.

In *Massachusetts Benefit Association* v. *Miles*, 137 U. S. 689, this Court rejected the construction of R. S. 966 for which petitioner is contending. This Court said (p. 691):

> "Did the case rest solely upon this statute [R. S. 966], it is difficult to see how interest could be computed upon the verdict, inasmuch as a specific allowance of interest on judgments would seem to exclude the inference that interest should be allowed on verdicts before judgments".

See also *Murphy* v. *Lehigh Valley Railroad Company*, 158 F. (2d) 481 (C. C. A. 2); *Blair* v. *Durham*, 139 F. (2d) 260 (C. C. A. 6).

It is submitted that petitioner is entitled to interest only from the date on which judgment was entered of record in petitioner's favor.

C. There is no conflict between the decision of the court below and the decisions of other Circuit Courts of Appeal.

Petitioner relies principally upon *Louisiana & Arkansas Ry. Co.* v. *Pratt*, 142 F. (2d) 847 (C. C. A. 5), in support of her interpretation of R. S. 966 and Rule 58 of the Rules of Civil Procedure.[2] Petitioner also relies on that case as evidencing a conflict in decisions of Circuit Courts of Appeal in different circuits.

The *Pratt* case involved an action under the Federal Employers' Liability Act to recover damages for personal injuries. The trial court entered judgment for the defendant upon the grounds that the verdict for plaintiff was inconsistent with the special findings. On appeal the judgment was reversed and the case remanded with instructions that a judgment be entered upon the verdict, 135 F. (2d) 692. The lower court entered judgment on the mandate with interest from the date of judicial demand calculated in accordance with the Louisiana Interest Statute. 142 Fed. (2d) 847. The court concluded that it is within the equity of R. S. 966 to award interest from the date of verdict where an appreciable time has elapsed between the verdict and the entry of the judgment. It relied in part on Rule 58 of the Rules of Civil Procedure in reaching that result.

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[2] Petitioner's brief cites without discussion the following cases: *Fowler* v. *Redfield* (C. C. N. Y. 1862), Fed. Cas. No. 5,003; *Dowell* v. *Griswold* (C. C. Or. 1877), Fed. Cas. No. 4,0490; *Gibson* v. *Cincinnati Enquirer* (C. C. Ohio, 1877), Fed. Cas. No. 5,391; *Griffith* v. *Baltimore & O. R. Co.* (C. C. Ohio, 1890), 44 F. 574, aff'd (1895). None of these cases involved the construction of the federal interest statute in a suit arising under the Federal Employers' Liability Act or under any other federal statute. The petitioner also cites *Leitch* v. *Chesapeake & Ohio Ry. Co.*, 125 S. E. 370, 97 W. Va. 498. In this case the Supreme Court of West Virginia reversed a lower court judgment for the plaintiff and remanded the case to the lower court for a new trial. Any remarks the court may have made with respect to interest were dicta and irrelevant to the issues before it.

In the *Pratt* case the mandate of the Circuit Court of Appeals was regarded both by the district court and by the Circuit Court of Appeals as allowing interest upon the judgment. The decision is a holding that in a proper case an appellate court has authority to direct the entry of the judgment for the plaintiff *nunc pro tunc* as of the date when the original judgment for the defendant was entered. Respondent submits no similar question is raised in this case. Under well established principles, a district court acting on a mandate from an appellate court containing a directive to enter a specific judgment has no authority except to enter a judgment in conformity with the mandate. *Hazel Atlas Co.* v. *Hartford Co.*, 322 U. S. 328. The mandate of the court below directed that judgment be entered for the petitioner but was silent as to the allowance of interest. Even assuming that by a strained construction of R. S. 966 the court below could have allowed interest from the date of the verdict, its failure to do so in the mandate prevented the district court from entering such a judgment. Petitioner took no action during the term in which the mandate was entered to correct the mandate or to appeal from the decision of the court below with respect to the failure to allow interest. This was a question which could have been, and therefore should have been, presented at that time. *Thornton* v. *Carter*, 109 F. (2d) 316 (C. C. A. 8). The court below correctly concluded that at this late date and by this proceeding it cannot recall and correct its mandate. Rule 60 (b) F. R. C. P.

Petitioner also referred to the decision of the Circuit Court of Appeals in *Blair* v. *Durham*, 139 F. (2d) 260 (C. C. A. 6). That case does not support petitioner's contention nor is it in conflict with the holding of the court below. In the *Blair* case the Circuit Court of Appeals affirmed a judgment of the trial court in favor of plaintiff. The court held that even though its mandate was silent as to interest the plaintiff was entitled to interest from the

date of the judgment, the judgment having been affirmed, upon the ground that the statutory right to interest under R. S. 966 automatically accrued to the plaintiff.

The *Blair* case dealt with interest on affirmance of a judgment for plaintiff. The Court did not discuss allowance of interest prior to the date of judgment. It is obvious, therefore, that the *Blair* case does not conflict with the decision of the court below.[2]

CONCLUSION

The respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[2] It should be pointed out that Rule 27 of the Circuit Court of Appeals for the Sixth Circuit provided that the mandate shall be taken to direct the allowance of interest in the circumstances involved in *Blair* v. *Durham, supra.* Under these circumstances, the silence of the mandate was immaterial. It is not unlikely that the Circuit Court of Appeals for the Second Circuit would have reached the same result as the Circuit Court for the Sixth Circuit in a case involving affirmance of a judgment for plaintiff in view of the fact that both courts have similar rules on this subject.